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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/811,272	03/25/2004	David K. Winstanley	H0006408-1170	2159

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EXAMINER
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CASAREGOLA, LOUIS J

ART UNIT	PAPER NUMBER
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3746

DATE MAILED: 07/12/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/811,272

Applicant(s)

WINSTANLEY, DAVID K. *e*

Examiner

Louis J. Casaregola

Art Unit

3746

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 6/6/06.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) 15,23 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 25 is/are allowed.
- 6) ☒ Claim(s) 1,2,4-14,16,17,19-22,24 is/are rejected.
- 7) ☒ Claim(s) 3,18 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### ***Election***

Applicant's latest response states that the species election requirement in the previous office action lists two species corresponding respectively to Figure 3 and Figure 4, and applicant then proceeds to elect the species of Figure 3. The two species delineated in election requirement are in fact listed as corresponding to Figure 2 and Figure 4; Figure 3 merely shows a graph. It appears that applicant actually intended to elect the Figure 2 species, consequently, this action is directed to that species.

The election in this case is made with traverse. Applicant argues that the claimed inventions are both species under a claimed genus and related inventions, hence, the election requirement must show reasons for insisting upon restriction; i.e. separate classification, different search fields, etc. Applicant's position on this point is disputed. Claimed species can be construed as properly covered by a claimed genus only if and when a generic parent claim is found to be allowable. That condition has not yet been met. Furthermore, the species in this case are not in fact bona fide related inventions since they constitute separate and alternative devices which are not usable together in the same sense as a combination and subcombination or apparatus and method of operation.

For the reasons discussed above, the species election requirement is proper and is consequently made final. Applicant has listed claims 1-14, 16-22, 24 and 25 as

readable on the elected Figure 2 species. An action on the merits of these claims is set forth below, and non-elected claims 15 and 23 are withdrawn from further consideration.

It is additionally pointed out that applicant's statement that claims 1-5, 8-12, 16-20 and 25 are all generic is not accurate because a number of these claims do not read on both species. Claims 3, 10 and 18, for example, recite a flow limiting passage that is "substantially straight between the inlet and outlet ports". This description applies exclusively to lower passage 204 in the Figure 2 species. There is no corresponding straight passage in the Figure 4 species, and claims that require such a feature are consequently not generic.

### ***Claim Rejections - 35 USC 112***

Claims 6-14, 21 and 22 are rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 6, 13 and 21 along with related dependent claims 7, 14 and 22 make reference to "the inlet port"; see line 1 in any of claims 6, 13 and 21. The cited expression is ambiguous since the claims include two inlet ports; see lines 3 and 9 of parent claim 1 as well as the corresponding sections of claims 8 and 16.

Claim 8 and related dependent claims 9-14 state that "a minimum static fluid pressure is developed in the flow passageway at a location adjacent the inlet port"; see claim 8, lines 6-7. It is not seen how this feature can accurately apply to the preferred embodiment of the invention. As shown in Figure 2, the inlet of passageway 124 has the widest flow cross section ( $A_{max}$ ) in the passageway. Since static pressure normally increases as flow cross section increases, the static pressure adjacent the inlet would appear to be a maximum rather than a minimum as presently claimed.

### ***Claim Rejections - 35 USC 102***

Claims 1, 2, 4-9, 11-14, 16, 17 and 19-22 are rejected under 35 USC 102(b) as being anticipated by Stalker.

The claimed passageway structure is all present in conventional flow apparatus of the type disclosed by Stalker. Attention is called for example to Stalker's Figure 4; note that venturi 10 taken either alone or in combination with conduit 9 corresponds to the claimed duct, and passage 4 corresponds to the claimed flow limiting passage. Note also that passage 4 includes inlet port 2 communicating with an upstream duct portion having a first cross section, and passage 4 further includes outlet port 3 communicating with a duct portion having a second, smaller cross section.

It is additionally emphasized out that while the claimed duct's inlet is described as "adapted to receive a flow of fluid from an inlet plenum", this is essentially a matter of intended use since the plenum is not positively recited. Furthermore, Stalker's flow apparatus clearly includes some type of unspecified fluid source at its inlet, and that fluid source can be broadly construed as a plenum.

With regard to claims 2, 9 and 17, it is pointed out that the orientation of and flow stream from Stalker's passage outlet 3 indicate that the outlet's axis is angled relative to the inner surface of the main flow duct.

With respect to claims 4, 11 and 19, it is additionally pointed out that Stalker's passage 4 includes several bends between inlet and outlet ports 2 and 3.

With regard to claims 6, 13 and 21, it is further pointed out that language characterizing an inlet or inlet port as a "low loss inlet" would apply to virtually any inlet structure, including Stalker's, which is curved or streamlined.

### ***Claim Rejections - 35 USC 103***

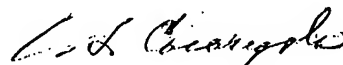
Claim 24 is rejected under 35 USC 103(a) as being unpatentable over Stalker in view of Sanders et al.

In addition to the feature's discussed above, claim 24 recites a duct inlet loss coefficient of "about .04 or less". Stalker does not disclose his inlet loss coefficient but

other bell-shaped inlet devices have loss coefficients of approximately .05 as suggested for example by Saunders; see column 3 lines 52-60. A value of approximately .05 would have thus been a conventional and hence obvious choice for an otherwise unspecified parameter needed to complete the design of Stalker's duct. Moreover, the prior art value of approximately .05 can reasonably be construed as falling within the upper limit of the claimed range of "**about** .04 or less" (emphasis added). Even if, however, the claimed upper limit were exactly .04, lowering the prior art value by .01 would have still been obvious since it is self evident that lowering a loss coefficient improves performance.

***Allowable Subject Matter***

Claim 25 is allowed. Claims 3 and 18 also include allowable subject matter but are objected to as depending from rejected parent claims. If rewritten in independent form, claims 3 and 18 will be allowed.



L. J. Casaregola  
571-272-4826 (M-F; 7:30-4:00)  
571-273-8300 FAX  
July 10, 2006

Art Unit: 3746

If repeated attempts to reach the examiner by telephone are unsuccessful, the art unit supervisor, Timothy Thorpe, can be reached at 571-272-4444.

Information regarding the status of this application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR, and status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).